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No. 07-1535

FILED
JUL 8 - 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The
Supreme Court of the United States

MICHAEL J. DEE, pro se,

Petitioner,

v.

STATE OF WYOMING,

Respondent.

On Petition For A Writ Of Certiorari To The Wyoming Supreme Court

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

DID THE PETITIONER PROPERLY RAISE A SUBSTANTIAL FEDERAL QUESTION, AND DID THE WYOMING SUPREME COURT BASE ITS DECISION ON INDEPENDENT AND ADEQUATE STATE GROUNDS, THEREBY DENYING THIS COURT JURISDICTION TO CONSIDER PETITIONER'S CLAIMS?

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OPINION BELOW

The opinion of the Wyoming Supreme Court is reported at *Dee v. Wyoming*, 177 P.3d 218 (Wyo. 2008). This opinion is before this Court as Appendix 1 to the petition for certiorari.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court by way of a Petition for Writ of Certiorari, through the authority of 28 U.S.C.A. § 1257(a). However, his case fails to satisfy the jurisdictional requirements of that statute.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner seeks to invoke the provisions of the U.S. CONST. AMEND. IV and V. However, he failed to properly present any questions pertaining to these provisions in the Wyoming Supreme Court.

STATUTORY PROVISIONS INVOLVED

In addition to the constitutional provisions set forth in Petitioner's Petition, Respondent provides the following statutory provisions.

28 U.S.C.A. § 1257

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

In 1982, Michael J. Dee was convicted, in a Wyoming district court, of possessing and cultivating marijuana. In January of 2007, Dee filed a complaint for declaratory relief in Wyoming's First Judicial District Court, Laramie County, Wyoming, in Civil Docket No. 169-223. In that complaint, Dee asked the district court to declare WYO. STAT. ANN. §§ 35-7-1031(c), 35-7-1039, and 35-7-1040 unconstitutional, as they allegedly violated his fundamental right to possess, use and grow marijuana and contravened the tenets of the Fourth and Fifth Amendments to the

United States Constitution. On May 7, 2007, the district court granted the State of Wyoming's motion for summary judgment and denied Dee's motion for summary judgment. Furthermore, the district court found that the statutes in question were constitutional and that Dee did not present a justiciable controversy.

On May 15, 2007, Dee filed a "Second Complaint" with Wyoming's District Court for the First Judicial District in Civil Docket No. 169-897. In the "Second Complaint," Dee renewed his assertions that the aforementioned statutes were unconstitutional and, furthermore, he asserted that "[d]oubts about [his] standing are removed by reason of [his] criminal convictions." The State of Wyoming moved the district court to dismiss Dee's second case for failing to state a claim upon which relief may be granted, pursuant to WYO. R. CIV. P. 12(b)(6). In that motion, the State of Wyoming alleged that Dee's claims were barred by the doctrine of *res judicata*, as Civil Docket No. 169-223 and Civil Docket No. 169-897 satisfied the four-factor test required for application of that doctrine under Wyoming jurisprudence.[1] The district court

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[1] Those factors are: "(1) identity in parties; (2) identity in subject matter; (3) the issues are the same and relate to the subject matter; and (4) the capacities of the persons are identical in reference to both the subject matter and the issues between them." *Markstein v. Countryside I, L.L.C.*, 77 P.3d 389, 394 (Wyo. 2003).

agreed and dismissed Dee's complaint with prejudice on June 25, 2007.

Dee appealed the district court's dismissal of the "Second Complaint," from Civil Docket No. 169-897. However, in his arguments to the Wyoming Supreme Court, Dee merely reasserted his substantive claims based on the alleged unconstitutionality of the Wyoming statutes at issue. Dee made no mention of any procedural issues stemming from the district court's determination that he was barred from re-litigating this issue based on the doctrine of *res judicata*. The Wyoming Supreme Court correctly determined that Dee's failure to address the *res judicata* issue was "fatal" to his appeal. Furthermore, the Wyoming Supreme Court determined that Dee's 1982 conviction was "res judicata as well," as the record reflected that Dee had never directly appealed that conviction and presented no legal argument as to why it should be overturned at such a late date.

REASON FOR DENYING THE WRIT

Petitioner raises three claims, which are wholly unsupported by and contradictory to the actual record in this case. Because Petitioner did not properly raise a substantial federal question before the Wyoming Supreme Court and because the Wyoming Supreme Court based its decision on independent and adequate state legal grounds, the claim is not within the jurisdiction of this Honorable Court. Therefore, the

State of Wyoming respectfully submits that certiorari should be denied due to want of jurisdiction.

ARGUMENT

THE PETITIONER FAILED TO PROPERLY RAISE A SUBSTANTIAL FEDERAL QUESTION, AND THE WYOMING SUPREME COURT BASED ITS DECISION ON INDEPENDENT AND ADEQUATE STATE GROUNDS, THEREBY DENYING THIS COURT JURISDICTION TO CONSIDER PETITIONER'S CLAIMS.

Petitioner asserts that the Wyoming Supreme Court has "decided an important question of federal law that has not been, but should be, settled by this Court." (Pet. for Writ of Cert. at 6). Particularly, he asserts that the Wyoming Supreme Court has "interpreted Petitioner's declaratory judgment action to mean only one thing. Petitioner is 'alleging' marijuana is a constitutional right on the same level as the Fourth and Fifth Amendments of the Constitution of the United States." (Pet. for Writ of Cert. at 5). However, a straightforward reading of the Wyoming Supreme Court's opinion in this case clearly shows that it never ruled on Petitioner's constitutional arguments because those issues were not properly raised before that court; the only issue considered by that court was whether, under Wyoming law, the district court properly dismissed Petitioner's second

suit on *res judicata* grounds. *Dee v. State*, 177 P.3d 218 (Wyo. 2008). Therefore, Respondent respectfully submits that this Court is without jurisdiction to hear this issue. *See Crowell v. Randell*, 35 U.S. (10 Pet.) 368, 398-99 (1836).

It is a long standing rule of this Court that, "when, as here, the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Street v. New York*, 394 U.S. 576, 582, 89 S.Ct. 1354, 1360 (1969) (citations omitted). In this case, the Wyoming Supreme Court stated that Petitioner did not present "any legal argument directly challenging the district court's determination [on *res judicata* grounds]. That failure is fatal to [his] appeal." *Dee v. Wyoming*, 177 P.3d 218, 219 (Wyo. 2008). Nowhere in the opinion did the Wyoming Supreme Court discuss the merits or rationale of Petitioner's alleged constitutional claims. Therefore, Petitioner's assertion that the Wyoming Supreme Court has ruled, in any way, on the constitutional merits of his case, is misplaced and without any basis in the record.

"This Court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds." *Herb v. Pitcairn*, 324 U.S. 117, 125, 65 S.Ct. 459, 463 (1945) (citations omitted). Because, as the record adequately reflects, the decision of the Wyoming Supreme Court was

based entirely on an interpretation of Wyoming's *res judicata* principles, this Court should follow its long-standing tradition and decline to rule upon this case.

CONCLUSION

For the above and foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted this 8th day of July, 2008.

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